**UNITED STATES DISTRICT COURT**
**FOR THE SOUTHERN DISTRICT OF GEORGIA**
**AUGUSTA DIVISION**

UNITED STATES OF AMERICA FOR THE USE AND BENEFIT OF PALMER STEEL SUPPLIES, INC.

and

PALMER STEEL SUPPLIES, INC.,

PLAINTIFFS

v.

AIM STEEL INTERNATIONAL, INC.,

and

ACC CONSTRUCTION-MCKNIGHT JOINT VENTURE, LLC

and

LIBERTY MUTUAL INSURANCE COMPANY

DEFENDANTS

CIVIL ACTION NO. ____________________

# COMPLAINT

Plaintiffs, the United States of America for the Use and Benefit of Palmer Steel Supplies, Inc., and Palmer Steel Supplies, Inc., (collectively "Palmer"), states as follows:

## THE PARTIES, JURISDICTION AND VENUE

1. Plaintiff, Palmer Steel Supplies, Inc., ("Palmer"), is a Texas corporation with its principal place of business located at 4300 Acapulco Ave., McAllen, Texas.

2. Defendant AIM Steel International, Inc., ("AIM") is organized under the laws of Panama whose principal place of business is in Georgia. AIM has represented to the Secretary of State of Georgia that it maintains its principal office address at Centery Tower Building, 4th Floor, 401 Ricardo J, Alfaro Ave, Panama. Upon information and belief, AIM Steel International's purported "principal office address" is actually the address of Chen Lee & Associates, a Panamanian law firm that specializes in "the formation of inshore and offshore corporations and private interest foundations" and whose website advertises its services under "Panama Offshore Privacy Services" where it boasts that using its services to create a Panamanian Corporation is important, according to the website, so one can "safeguard your assets." http://www.panamaoffshoreprivacy.com/en.html (linked to from http://www.chenleeyasociados.com/) (last visited 9/30/2015).

3. AIM contracted with Palmer by a written Purchase Order which lists AIM's address as 1078 Citizens Parkway Suite I, Morrow, Clayton County, Georgia. AIM has appointed a registered agent in Georgia at 1600 Parkwood Circle, #400, Atlanta, Cobb County, Georgia. Upon information and belief, AIM's

officers direct, control, and coordinate its activities from its headquarters in Clayton County, Georgia. Accordingly, AIM's principal place of business is in Georgia.

4. Defendant ACC Construction – McKnight Joint Venture, LLC, ("ACC/M"), is a Georgia corporation with its principal office address located at 635 Northwest Frontage Road, Augusta, Georgia 30909.

5. Defendant, Liberty Mutual Insurance Company, Surety for ACC/M ("Surety"), is a Massachusetts Insurance Company with its principal office address located at 175 Berkeley St., Boston, Massachusetts 02116. Surety's registered agent for service of process in Georgia is Corporation Service Company, 40 Technology Parkway South, Suite 300, Norcross, GA 30092.

6. This Court may exercise personal jurisdiction over AIM because its principal place of business is in Georgia.

7. This Court may also exercise personal jurisdiction over AIM and Surety to the extent service is had on their respective appointed registered agents in the forum state and because their continuous and systematic contacts with the forum bear a discernable relationship to Palmer's claims. For example, their contracts with ACC/M give rise to Palmer's claims, such that the exercise of jurisdiction comports with notions of fair play and substantial justice.

8. This Court may exercise personal jurisdiction over ACC/M because it is a resident of the forum state.

9. This Court has subject-matter jurisdiction because the Complaint raises a federal question in that the Owner of the construction project giving rise to this cause of action is the United States of America and the project is governed by 40 U.S.C. § 3133(b) ("Miller Act") and 28 U.S.C. § 1352.

10. This Court has supplemental jurisdiction for Palmer's questions of state law pursuant to 28 U.S.C. § 1367.

11. Venue is proper in this Court because the Owner of the construction project, which gives rise to this action, was an agency of the United States Government, said project was performed outside of the United States, and ACC/M, the principal obligor of the bond securing Palmer's right to be paid under the Miller Act and 28 U.S.C. § 1352, ACC/M, is a resident of the forum state and, in particular, the Southern District of Georgia.

**COMMON ALLEGATIONS**

12. On or about September 29, 2012, ACC/M was awarded contract number SAQMMA-12-C-0265 (the "Prime Contract") from the United States Department of State ("DoS") in the amount of $80,883,590.00 to construct the Housing Units and Supporting Facilities project (the "Project") at Port-au-Prince,

Haiti. A true and correct copy of the unclassified Prime Contract is attached hereto as **Exhibit A**.

13. Pursuant to the Prime Contract and the Miller Act, on or about October 15, 2012, Surety executed a payment bond identified as number 016049527 ("Bond") for the protection of persons supplying labor or materials for the Project. A true and correct copy of the Bond is attached hereto as **Exhibit B**.

14. Thereafter, ACC/M subcontracted a portion of the Project to AIM (the "Subcontract").

15. On or about October 10, 2014, AIM subcontracted a portion of the Project to Palmer pursuant to purchase order number 10214-01 (the "Purchase Order"). A true and correct copy of the Purchase Order is attached hereto as **Exhibit C**. Pursuant to the Purchase Order, Palmer agreed to provide certain fabricated structural steel required by DoS and ACC/M for the Project.

16. The original Purchase Order amount was $458,569.00. Due to Change Order Modification #001, the Purchase Order increased by $125,000.00, for a total Purchase Order amount of $583,569.00. A true and correct copy of Change order Modification #001 is attached hereto as **Exhibit D**.

17. Palmer fabricated and delivered the structural steel according to the requirements in the Purchase Order.

18. Notwithstanding Palmer's performance, AIM refuses to pay Palmer the remaining balance of $58,356.91 that is due and owing for the structural steel Palmer provided.

**COUNT I—PAYMENT BOND CLAIM**

19. Palmer restates and reiterates each and every preceding allegation as if set forth specifically herein.

20. Pursuant to Part I § H.4.1 of the Prime Contract and the Miller Act, ACC/M was obligated to furnish a payment bond in the amount of 100% of the contract price, $80,883,590.00. Exhibit A at 63. The Bond exists to ensure payment of all labor and materials provided to the Project. *Id.* § H.4.3; 40 U.S.C. § 3133. The Bond is required to remain in full effect until final acceptance of the project by the DoS; thereafter, the Bond remains in effect but the penal sum is reduced to 10% of the original penal sum. *Id.* § H.4.4.

21. The Bond provides that the Surety "binds itself, jointly and severally with [ACC/M], for the payment of [$80,883,590.00]." Exhibit B. The sole condition on the Surety's obligation to ensure payment for furnishing labor and materials to the project is that if "***all*** persons having a direct relationship with [ACC/M] ***or*** [AIM]" are promptly paid, the obligation of Surety to make payment is void. *Id.* (emphasis added).

22. Palmer supplied structural steel to the Project. That structural steel was provided pursuant to a Purchase Order issued from AIM, a subcontractor to ACC/M. Accordingly, Palmer has a direct relationship with a subcontractor of ACC/M.

23. The Bond further provides that Surety's obligation is void only if the payment made to Palmer includes "authorized modifications of the contract that subsequently are made." Exhibit B.

24. Palmer has not received full payment for the structural steel it furnished to the Project.

25. There remains due and owing to Palmer $58,356.91, exclusive of interest, costs, and attorneys' fees, for the materials it furnished to the Project. That amount has been due and owing for more than 90 days.

26. ACC/M had actual notice that within 90 days of Palmer furnishing the materials under the Purchase Order AIM failed to pay Palmer, in full, for those materials. Palmer provided timely invoices to AIM requesting payment for the materials Palmer furnished. Upon information and belief, those invoices were forwarded to ACC/M. A true and correct copy of the invoices requesting payment for the materials Palmer provided are attached hereto as **Exhibit E**. Because Palmer provided the invoices requesting payment within 90 days of Palmer furnishing the materials to the Project it has a reasonable good faith belief that

ACC/M had actual notice that Palmer furnished materials for which it had not been paid.

27. This action is filed within one year from the date on which Palmer furnished materials to the Project.

28. Palmer has satisfied the conditions of the Bond and is, therefore, entitled to enforce the obligations therein by receiving a judgment against Surety and ACC/M, jointly and severally, in the amount of $58,356.91.

29. Pursuant to the Miller Act, Palmer is likewise entitled to judgment on the obligations set forth in the Bond because it has satisfied the conditions stated on the bond and substantially complied with those provided by the Miller Act. Accordingly, Palmer is additionally entitled to judgment on the Bond under the Miller Act against the Surety in the amount of $58,356.91

**COUNT II—BREACH OF CONTRACT**

30. Palmer restates and reiterates each and every preceding allegation as if set forth specifically herein.

31. AIM was contractually obligated to pay Palmer $583,569.00 in consideration for Palmer's performance under the Purchase Order.

32. AIM materially breached the Purchase Order by failing to pay Palmer in accordance therewith.

33. The Purchase Order incorporated as a matter of law, pursuant to 31 U.S.C. § 3905, an obligation of AIM to pay Palmer within 7 days of AIM receiving payment from ACC/M.

34. Pursuant to the agreement of AIM and Palmer, AIM made progress payments to Palmer during the course of performance. However, AIM withheld from each progress payment 10% of the total payment as retainage. The agreement between AIM and Palmer required AIM to make final payment of the Purchase Order amount (including all retainage withheld) to Palmer upon Palmer completing its work under the Purchase Order.

35. Palmer has completed its obligations under the Purchase Order, ACC/M and DoS have accepted the materials Palmer furnished, and ACC/M has paid AIM for the materials Palmer furnished.

36. Based on AIM's withholding of retainage from Palmer over the course of performance, AIM is currently withholding from Palmer $58,356.90 in retainage which it refuses to pay to Palmer.

37. Upon information and belief, over the course of performance, AIM received payment from ACC/M for materials Palmer furnished for which AIM did not tender payment to Palmer within 7 days.

38. Upon information and belief, ACC/M did not hold retainage from AIM for amounts paid to AIM by ACC/M for materials Palmer furnished.

Accordingly, for any such amounts, payment became due to Palmer within 7 days of Palmer completing its work and DoS and ACC/M accepting Palmer's materials.

39. Palmer completed its work and DoS and ACC/M accepted Palmer's materials more than 7 days ago.

40. Palmer has made demand on AIM that it immediately pay Palmer the $58,356.91 now due and owing. AIM has refused to do so.

41. Due to AIM's failure to pay Palmer as required by the Purchase Order, Palmer has been damaged in the amount of $58,356.91 plus interest, costs, and attorneys' fees.

42. Pursuant to 31 U.S.C. § 3905, Palmer is additionally entitled to interest calculated from the day after each and every payment AIM failed to timely make was due at the rate computed pursuant to 31 U.S.C. § 3901(a).

**COUNT III—CONVERSION**

43. Palmer restates and reiterates each and every preceding allegation as if set forth specifically herein.

44. Upon information and belief, AIM received payment from ACC/M for the materials Palmer furnished which AIM is refusing to pay to Palmer.

45. Pursuant to the Purchase Order and 31 U.S.C. § 3905, AIM was obligated to pay to Palmer within 7 days the portion of any payment it received

from ACC/M for materials Palmer furnished to the Project under the Purchase Order.

46. Inconsistent with the rights and obligations of AIM described herein, AIM failed to pay to Palmer the portion of the funds AIM received from ACC/M which were due to be paid to Palmer within 7 days of receipt thereof. Accordingly, AIM has illegally exercised rights of ownership over Palmer's funds.

47. AIM's failure to pay the funds it received for Palmer's materials is an unauthorized assumption and exercise of the right of ownership over the funds belonging to palmer, in hostility to Palmer's rights.

48. AIM's failure to pay the funds it received for Palmer's materials is an act of dominion over the funds belonging to Palmer inconsistent with its rights in the funds.

49. AIM's failure to pay the funds it received for Palmer's materials is an unauthorized appropriation by AIM.

50. Palmer supplied materials to AIM for the Project with the express understanding AIM would pay for those materials.

51. AIM's failure to pay for the materials Palmer supplied without returning those materials is an unauthorized assumption and exercise of the right of ownership over Palmer's materials, in hostility to Palmer's rights.

52. AIM's failure to pay for the materials Palmer supplied without returning those materials is an act of dominion over Palmer's materials inconsistent with its rights in the materials.

53. AIM's failure to pay for the materials Palmer supplied without returning those materials is an unauthorized appropriation by AIM.

54. Palmer has demanded AIM pay over the funds it received for the materials Palmer furnished. AIM has refused to do so.

55. Accordingly, AIM retains illegal possession of funds and materials and, thereby, is liable for conversion.

56. Palmer is entitled to have those funds for which AIM has illegally retained possession paid to Palmer, together with all gains, interest and otherwise, for which AIM has benefited as a direct and proximate result of AIM's conversion of Palmer's funds.

**COUNT IV—UNJUST ENRICHMENT**

57. Palmer restates and reiterates each and every preceding allegation as if set forth specifically herein.

58. Palmer pleads in the alternative, that it conferred a benefit to ACC/M by providing materials for the Project.

59. ACC/M has been paid by DoS for the materials Palmer provided.

60. Palmer is entitled to be compensated for the materials that have benefited ACC/M.

61. Accordingly, justice requires that Palmer recover the value of the materials it provided for the Project from Palmer to prevent ACC/M from being unjustly enriched.

**COUNT V—RECOVERY OF EXPENSES OF LITIGATION FROM AIM**

62. AIM has acted in bad faith, has been stubbornly litigious and has caused Plaintiff unnecessary trouble and expense, entitling Plaintiff to an award of reasonable attorney fees and expenses of litigation under O.C.G.A. § 13-6-11 and as otherwise provided by law.

WHEREFORE, Palmer Steel Supplies, Inc., demands:

A. As to Count I, Judgment against Surety on the Bond in the amount of $58,356.91;

B. As to Count II, Judgment against AIM for breach of contract in the amount of $58,356.91 plus interest, pursuant to 31 U.S.C. § 3905(c), calculated at the rate computed pursuant to 31 U.S.C. § 3901(a);

C. As to Count III, Judgment against AIM for conversion in the amount to be proved at trial;

D. As to Count IV, Judgment against ACC/M for unjust enrichment in the amount to be proved at trial;

E. That it recover prejudgment interest, costs, and attorneys' fees pursuant to O.C.G.A § 13-6-11; and,

F. All other relief to which it may be entitled.

Respectfully submitted,

*/s/Melissa J. Davey*
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